IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 1058 of 1999

POWER HOUSE KARMCHARI SANGH
V/S
THE JUDGE INDUSTRIAL TRIBUNAL UDAIPUR

Mr. M.MRIDUL assisted by Mr. ASHOK CHOUDHARY, for the appellant / petitioner

Mr. RAVI BHANSALI, for the respondent

Date of Order : 5.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

The appellant Sangh seeks to assail the order of the learned Single Judge dt. 16.7.99 allowing the writ petition of respondent.

The facts in very brief are that there was one Maharana Bhupal Supply Company at Udaipur, hereafter referred to as the Company, which was acquired by the State Government under the provisions of Rajasthan Private Electricity Supply Undertaking (Acquisition) Act, 1975. According to which, it was w.e.f. 23.4.1975, that the vesting occurred in the State, and it in turn vested in the then Rajasthan State Electricity Board. The petitioner Sangh is the Sangh of the employees of the said company. It appears that the Sangh raised an industrial dispute, whereupon the matter was referred by the appropriate

Government to the Industrial Tribunal for adjudication vide notification dt. 26.2.1980, and formulating the dispute to the effect, as to whether non payment of arrears on the basis of the wage board for the period 1.4.74 to 22.4.1975 by the Rajasthan State Electricity Board to the erstwhile employees of Maharana Bhupal Electric Supply Company is proper, or not. The learned Labour Court tried the dispute, and took into consideration an agreement entered into between the Company and employees on 8.1.65, wherein it was agreed that the employees will be entitled to the same emoluments from the Company as are payable to the employees of Rajasthan State Electricity Board, hereafter to be referred to as the Board, and that the Board has revised the pay scale by R.S.E.B. Employees Emoluments Regulation, 1978 giving revised pay scale w.e.f. 1.4.1974, and the Board vide order dt. 21.7.78 ordered, that the erstwhile employees of the Company, who are working in the Board, will be entitled to the revised pay scale w.e.f. 23.4.75, as prior to that date they were not the employees of the Board. The learned Labour Court found, that the employees of the Company are entitled to the pay-scales revised by the Board in view of the registered agreement dt. 8.1.65, and since the pay scale was revised w.e.f. 1.4.74, they are also entitled to the same scales w.e.f. 1.4.74. Then, the provisions of Section 17 of the Act were quoted, and considered, and it was held, that the liability occurred after 1978, on account of promulgation of the regulation,

i.e. it occxurred after vesting date, the liability is to be shouldered by the Board, and the provisions of the agreement of 1965 binds the liability. It was held, that if the order would have been passed prior to 23.4.75 prior to vesting, and thereby liability would have attracted, obviously that is required to be shouldered by the Company, but since this is not the situation, the Board cannot draw any benefit therefrom. Thus, it was found that the Board is liable to pay the benefit of revised pay scale, for the period 1.4.74 to 23.4.75, and the reference was answered accordingly.

This award was challenged by the Board by filing writ petition before this Court, and the learned Single Judge vide impugned judgment allowed the writ petition of the Board. It was found, that the provisions of Section 19 of the Industrial Disputes Act is a general legislation, while the provisions of the Rajasthan Private Electricity Supply Undertaking (Acquisition) Act, 1975 is special enactment, and therefore, the rights and liabilities of the parties would be governed by this 1975 Act, and accordingly it was held, that the Acquisition Act, 1975 is a special enactment for taking over certain private supply companies, and rights and liabilities, were enumerated under the Act, and obviously it being special statute, the provisions of which shall prevail, the award cannot be sustained, and it was set aside.

Arguing the appeal it was contended, that in view of the agreement with the Company dt. 8.1.65, the workmen are entitled to the pay scales equal to those of the Board, and since the Board had revised the pay scales vide Regulations of 1978, the liability of paying revised pay scales to the appellant employees accrued after vesting date being 24.3.75, and therefore, by virtue of Section 7 of the Act, the Board was liable to make the payment. It was contended that the learned Single Judge had gone stray by assuming the existence of any conflict between the provisions of Section 19 of the Industrial Disputes Act, and Section 7 of the Act of 1975, and holding that the provisions of the Act of 1975 was the special law vis a vis the Industrial Disputes Act. According to the learned counsel agreement dt. 8.1.65, and its binding nature is no more in controversy, inasmuch as it is only by virtue of that agreement, that employees were being given the pay scales at par with the pay scales of the employees of the Board, and it is precisely for this reason that the Board also had given the benefit of the regulations to the employees, but did not give the benefit for the interregnum period i.e. the date from which the benefit accrued by the Regulations till the vesting of the Company. According to the learned counsel the question, therefore, precisely is, as to whether the liability was rightly fastened on the Board, or not, and according to the learned counsel even

reading of Section 7, including its explanation, the liability rests on the Board, and therefore, the impugned order of the learned Single Judge is liable to be set aside.

Learned counsel for the respondent, on the other hand, contended that from reading of the language of Section 7 of the Act of 1975, it is clear, that the liability of the emoluments, including revised emoluments, for the period, upto and including the vesting date, continued to be that of the Company, and may be, that there may not be any conflict between the provisions of Section 19 of the Industrial Disputes Act vis a vis Section 7 of the Act of 1975, but then, the liability fastened on the Board was rightly set aside by the learned Single Judge.

We have considered the submissions, and have gone through the provisions of the Act of 1975.

At the outset it may be observed, that there is no controversy, or dispute, on the question, that the employees, being the members of the appellant Union, were, and are entitled to the emoluments at par with the employees of the Board. Obviously, therefore, with the promulgation of 1978 Regulation these employees also did become entitled to the revised emoluments, which stood revised from 1.4.74; and in that view of the matter, there

is no question of any conflict being there between Section 19 of the Industrial Disputes Act, vis a vis Section 7 of the Act of 1975.

That being the position, since the workmen are entitled to the emoluments, the precise question is, as to who is to shoulder the liability i.e. the Board, or the Company. As the things exist, unfortunately, the Company has not been impleaded as party before the learned Industrial Tribunal, with the result, that the Company could not be directed by the Industrial Tribunal, and cannot be directed by this Court either, to shoulder the responsibility, even if the liability is found to be resting with the Company. In that view of the matter, the only surviving question, requiring to be decided is, as to whether the Board is liable for the liability, or not.

Section 7 of the Act of 1975 makes provision of vesting, and enacts consequences of vesting. So far the question of liability, and obligations, qua the employees etc. is concerned, the matter is covered by the provisions of Sub-section (5) of Section 7, and the explanation appended thereto, we may gainfully quote the language of Sub-section (5), and its explanation which reads as under:-

> "(5) All the liabilities and obligations, other than those vesting in the Government under sub-sections (1) and (3), shall continue

> to be the liabilities and obligations of the licensee, after the vesting date.
>
> Explanation- All liabilities and obligations in respect of staff, taxes, Provident Fund, Employees State Insurance, industrial disputes and all other matters, upto and including the vesting date, shall continue to be the liabilities and obligations of the licensee, after the vesting date."

Sub-section (h) of Section 2 of the Act, defines "Licensee" which in the present case means the Company, and Sub-section (b) defines the "Board" which obviously means the Rajasthan State Electricity Board; so far referred to as the Board. In this background, according to Sub-section (1) of Section 7 the property, rights, liabilities, and obligations, specified below, in respect of the Undertakings, shall vest in the Government on the vesting date, provided, however, that arrears due from the consumers, on account of supply of electricity upon the vesting date shall be recoverable by the licensee from the consumers even after the said date. Then, according to sub-section (2) all the assets specified in sub-section (1)(i) shall vest in the Government free from any debts, mortgages or similar obligations of the licensee, or attaching to the undertaking, provided however, that such debts, mortgages or obligations shall attach to the amount payable under this Act, for the assets. Then, according to sub-section (3) the license granted to the licensee shall be deemed to have been terminated on the vesting date, and all the

rights, liabilities and obligations of the licensee, under any agreement, except those relating to the supply of electricity, entered into before that date shall devolve, or shall be deemed to have devolved, on the Government.

In this sequence, as quoted above, sub-section (5) provides, that all the liabilities and obligations, other than those vesting in the Government under sub-section (1) and (3), shall continue to be the liabilities and obligations of the licensee, after the vesting date. Obviously the liability to make payment of the emoluments of the employees till the vesting date, is not one of the liabilities, or obligations, enumerated in sub-section (1) and sub-section (3). That being the position, per force the language of sub-section (5), the liability in this regard, continued to be the liability, or obligation, of the licensee, even after the vesting date.

Then, coming to the explanation appended to it; all that it provides is, that all liabilities and obligations in respect of staff.....upto and including the vesting date, shall continue to be the liabilities and obligations of the licensee, after the vesting date. In our view, therefore, the precise question, requiring to be considered is, as to whether liability can be said to be "upto and including the vesting date", or not? Obviously because, if it falls within the four corners of the

explanation, liability upto and including the vesting date has to be continued to be the liability of the licensee, even after the vesting date. The second aspect of the matter is, as contended by the learned counsel for the appellant, that the Regulations of 1978 was promulgated in 1978, and till then there was no liability of anybody qua the employees, and since the liability to the employees accrued, or came into existence by virtue of promulgation of 1978, it should be taken to be the liability, after the vesting date, and cannot be said to be the liability "upto and including the vesting date". The argument on the face of it is very attractive, but we are afraid it is difficult to be accepted. True it is that liability came into existence after the vesting date, i.e. with promulgation of 1978 Regulation, but then, the liability arises for the period 1.4.74 upto and including the vesting date. Thus, the promulgation of the Regulation may be the reason for giving rise to the liability, but then, the liability does not relate to the period after the vesting date, rather it relates to the period upto and including the vesting date. That being the position, the liability continues to be of the licensee, even after the vesting date, and cannot be passed on, nor is required to be shouldered, by the State, or the Board.

As a matter of fact even from the bare language of Sub-section (5) itself it is very clear, that since this

liability does not fall within any of sub-sections (1) and (3), it obviously continues to be the liability of the licensee. In that view of the matter, even if the explanation is interpreted, it cannot be interpreted in a manner to nullify the substantive provision of sub-section (5), and to be passing the liability on the Board.

The net result of the aforesaid discussion is, that though for different reasons, but acceptance of the writ petition by learned Single Judge is not required to be set aside, or interfered with, in our special appellate jurisdiction.

The appeal is, therefore, dismissed. The parties shall bear their own costs.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

/Sushil/